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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/519,847 03/06/00 RIPOCHE

P 058134

EXAMINER

IM52/1107

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HOFFMANN, J

ART UNIT

PAPER NUMBER

1731

DATE MAILED:

11/07/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/519,847	RIPOCHE ET AL.	
	Examiner	Art Unit	
	John Hoffmann	1731	

-- Th MAILING DATE of this communication appears on th cover sheet with the corr spondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 October 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) 4 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |                                                                                              |                                                                             |
|----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 26 October 2001 has been entered.

### ***Election/Restrictions***

Claim 4 remains withdrawn for the reasons previously given.

### ***Drawings***

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 11 October 2001, have been approved.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 3 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Although claim 3 was not amended itself, since claim 1 is amended, claim 3 now requires something not previously disclosed. Claim 3 requires that the main axis of the heating means and the heating means of the injector means be at a fixed angle. Claim 1 now requires that the relative positions of the injector means and the heating means are adjusted with respect to each other. The only way these two conditions can be met is by moving one of the two means along its main axis - but there is simply no support for this. The only disclosure for relative movement with respect to each other is the type shown in figures 4-5 - but for this embodiment, the axis are not at a fixed angle. Notice the spacing "d" in figures 4-5: the two lines never intersect - there is no angle (fixed or otherwise) between the two axes.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 rejected under 35 U.S.C. 102(b) as being anticipated by Powers  
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AS to the method being a method of fabricating an optical fiber preform, see the TITLE. AS to the "outside deposition", see figures 3 and/or 7, because the deposition occurs outside of the preform. As to the deposition of silica possibly doped with at least one dopant by injecting at least one substance in the form of silica or a precursor of silica, see figure 3, feature 40. AS to the "heating area". It is deemed that the area bounded by lines "D" and "C" is such an area because it is an area and a portion of that area is heated. 41 is the "heating means". 40 is the "injector means". These two things are associated with each other, in that they are both part of the same apparatus. The double headed arrow near each of 40 and 41 represents that there is at least one pass and that the position of each relative to each other is altered - at least when they reach their turn-around points.

As to claim 2, it is clear that adjustment is always occurring - thus it occurs between each pass. It is further noted that one can arbitrarily define what constitutes each pass so that there is a time period between each one so as to have a period of time between each pass. For example a pass could be defined as a downward movement only.

As to claim 3, Looking at figures 3 and 4 it is clear that at any given instant in time the heating means 41 has a main axis in a plane that is perpendicular to the longitudinal axis. And the injector means 40 has a main axis at a fixed angle to the main axis of the heating means - it is about 90 degrees. All of the other limitations are clearly met. Alternatively, it is deemed that they meet at a fixed angle - if for only a short period of time.

***Claim Rejections - 35 USC § 112***

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 is not understood because it requires that the heating and injector means to be in a plane and at a fixed angle and that they moved. It appears to require two contradictory things. If the devices are to move as claimed, their axes fail to remain in the plane.

***Response to Arguments***

Applicant's arguments filed 26 October 2001 have been fully considered but they are not persuasive.

See the Advisory Action of 18 October 2001 for the reasons why the arguments are not persuasive.

To further expound on the "angle" question: it is just an optical illusion that the two axes intersect (are at an angle). If one were to look at the entire device from differing perspectives, one would easily see that the axes do not intersect and do not form an angle.

It is argued that features 40 and 41 of Powers are burners. This is true, but the claims do not exclude the possibility that the heating means and injector means cannot

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also be burners. Since 40 generates heat, it is proper to call it a heating means. And since 41 injects gas, it is proper to call it an injector means.

It is also argued that there is no distinction between the heating means and the injector means. Since the claims do not require a difference between the two means, it does not matter that Powers does not have any distinction.

The argument that Powers has a cold area is not persuasive, because the claims do not preclude a cold area.

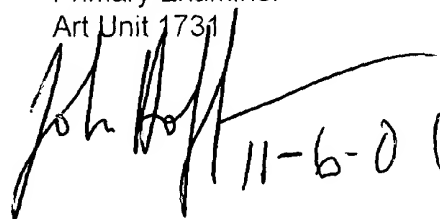
Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Hoffmann whose telephone number is 703-308-0469. The examiner can normally be reached on Monday, Tuesday, Wednesday, Thursday, Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stan Silverman can be reached on 703-308-3837. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7115 for regular communications and 703-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

jmh  
November 6, 2001

John Hoffmann  
Primary Examiner  
Art Unit 1731



11-6-01